IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5788 of 2007()

CRIME NO.407/07 OF KONNY POLICE STATION

: PETITIONER/ACCUSED

MAHIN KANNU, S/O.SHAHUL HAMEED,
NEDIYAKALAYIL HOUSE, KUMMANOOR,
KONNY, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5788 OF 2007

Dated this the 25th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.332 of the IPC. The crux of the allegations against the petitioner is that at 9 a.m. on 25/8/07 the petitioner caused hurt on the left hand of a Forest Guard and then deterred him from the performance of his official duty. Investigation is in progress. The petitioner apprehends imminent arrest.

2. According to the de facto complainant, the petitioner is involved in activity of illicit mining and transportation of sand. The victim was very much opposed to such clandestine activity. On account of this, the petitioner allegedly entertained animus against the victim. Because of such animosity, the petitioner is alleged to have attacked the victim

who was engaged in the performance of his official duty. How was the attack committed? The allegation is that the petitioner allegedly bit the de facto complainant. That is how an injury was suffered by the victim, it is alleged. No wound certificate is available in the Case Diary. The learned Public Prosecutor has taken me through the averments in the First Information Statement. Admittedly, it is a bite injury which was suffered.

3. The petitioner has totally a different version to advance. The learned counsel for the petitioner submits that the petitioner has no criminal antecedents whatsoever. It is an imaginary theory that the petitioner has animus against the victim. The victim unnecessarily suspected the petitioner to be a criminal. The petitioner was unnecessarily and without any provocation belaboured by the forest official. When he was choked, the petitioner to escape, had bit the official who was unnecessarily tormenting him. This is what had happened. The petitioner is being unnecessarily vexed and harassed. The petitioner is willing to co-operate with the police. Appropriate directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner to save him from the undeserved trauma of arrest and detention. The very allegation that the petitioner attacked the victim by biting him is improbable and artificial, submits the

learned counsel for the petitioner.

4. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor does not oppose the application for anticipatory bail. He only prays that appropriate conditions may be imposed.

5. I am satisfied, in the facts and circumstances to which I have made a brief reference above, that the petitioner is entitled to issue directions under Sec.438 of the Cr.P.C.

6. More detailed reference to facts and discussions do not appear to be necessary.

7. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 3/10/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 4/10/07 and 5/10/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned

Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 3/10/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 3/10/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge